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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,678	12/19/2003	Beth A. Lange	17973 (27839-1232)	4168
45736 7590 12/15/2008 Christopher M. Goff (27839) ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE SUITE 2600 ST. LOUIS, MO 63102				
EXAMINER				
FIDEL, DAVID				
ART UNIT		PAPER NUMBER		
3728				
NOTIFICATION DATE		DELIVERY MODE		
12/15/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BETH A. LANGE

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Application 10/741,678  
Technology Center 3700

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Mailed: December 12, 2008

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*Before KRISTA ZELE, Deputy Chief Appeals Administrator.  
ZELE, Deputy Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on October 16, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

### APPEAL BRIEF, APPEALED CLAIMS

Appellants have not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 15, 23, 28, and 29 are rejected under 35 U.S.C. § 103(as being unpatentable over Ehrlich (U.S. Patent 4,221,221) in view of Gallo (U.S. Patent 6,622,856); 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to the claims above, and further in view of Moore (U.S. Patent 6,405,867). The rejected claims that have not been appealed and/or argued for appeal are claims 20-22.

### DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8<sup>th</sup> ed. Rev. 7, Sep. 2008).

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to enter a paper canceling claims 20-22;
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims; and

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3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ:hh

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